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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/565,599
Filing Date: January 24, 2006
Appellant(s): KURATA, HIDEKI

Manabu Kanesaka
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/25/08 appealing from the Office action mailed 3/14/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

The Examiner agrees with the first grounds of rejection (claims 1 and 3 anticipated by Mason) however the second grounds of rejections (4-6 obvious over Mason in view of King and Koizumi) should be:

Whether, claims 4-5 are obvious under 35 U.S.C. 103(a) over Mason in view of King ('969).

and

Whether, claim 6 is obvious under 35 U.S.C. 103(a) over Mason in view of King ('969) and Koizumi ('715).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3918166	Mason	11-1975
3662969	King	5-1972
5406715	Koizumi	4-1995

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Mason (USPN 3918166).

Mason teaches a strip body (16) having two edges disposed along a longitudinal direction of the strip body and a handle (any portion near element 24 can be considered the handle; anything that can be grasped by the hand can be considered a handle, therefore the housing of the reel could be considered the handle as well as the upper and lower edges of the strip) at a front end of the strip body. There is a reel body (18) having a rotary member (18a) to which a rear end (26) of the strip body is attached and reeling in or playing out the strip body to or from the rotary member by rotating this rotary member. The strip body further comprises flexible members (14; figure 2) disposed on both edges of the strip body, and the flexible member are configured to make close contact with an abutting surface along the long direction of the strip body.

With regards to claim 3, the flexible members are made from rubber (col. 2, lines 55-57).

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason ('166) in view of King (USPN 3662969).

Mason teaches a strip body (16) having two edges disposed along a longitudinal direction of the strip body. There is a reel body having a frame (18) and a rotary member (18a) rotatably attached to the frame. The reel is spring loaded. A rear end (26) of the strip body is attached to the rotary member so that the strip body can be withdrawn from the reel body and wound onto the rotary member. The strip body further comprises flexible members (14; figure 2) disposed on both edges of the strip body, and the flexible member are configured to make close contact with an abutting surface along the long direction of the strip body.

With regards to claim 5, there is further a handle located at a front end of the strip body (any portion near element 24 can be considered the handle; anything that can be grasped by the hand can be considered a handle, therefore the upper and lower edges of the strip are considered the handle) and a handle attached to the reel body (the housing of the reel can be considered the handle attached to the reel body since it is capable of being grasped).

Mason teaches all the essential elements of the claimed invention however fails to teach that the reel is wound and unwound by means of a handle. King teaches a tape measure with a reel that is wound by means of a handle (18). It is well known in the art to have reels that are either spring-loaded or manually retractable and that these various types of reels are equivalent structures. The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the spring-loaded reel of Mason for the manual reel of

King for retracting the tape measure for storage since they are considered to be equivalent structures known in the art.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mason ('166) in view of King (USPN 3662969) as applied to claim 5 above and further in view of Koizumi et al. (USPN 5406715).

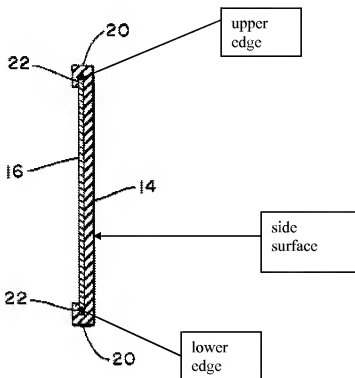
Mason and King teach all the essential elements of the claimed invention however fail to teach that the strip body is made from a glass fiber. Koizumi teaches a tape measure that is made from glass fiber (col. 3, lines 60-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the strip body of Mason from glass fiber as taught by Koizumi, since it has been held within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. *In re Leshin*, 125 USPQ 416. Further it would have been obvious to use glass fiber as the material for the strip body of Mason since glass fiber is a material known to have sufficient flexibility which is clearly an important property when dealing with tape measures.

(10) Response to Argument

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Mason (USPN 3918166).

The appellant argues that the elastic belt (14) of Mason is not disposed on an edge of the head circumference measuring device. In response, figure 2 (shown below) clearly shows a cross section view of the measuring device. The strip body (16) is covered by the elastic belt (14) on the top edge, the bottom edge (element 20 on figure 2) and a side surface (not labeled,

but shown by reference number 14 on figure 2). The elastic belt forms a “c” shape around the strip body. The appellant states that the Meridian Webster Online Dictionary defines edge as “a line where an object or area beings or ends.” The examiner would like to point out that the upper edge and the lower edge of the strip body are considered edges then because they are lines which define an area. This defined area is located between the upper and lower edges.



Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mason ('166) in view of King (USPN 3662969).

The appellant argues King does not remedy the deficiencies of Mason with regards to a reel that is wound and unwound by means of a handle. The appellant further states that adding a handle to a wind a tape, in a same direction onto a reel, to a device that already is spring loaded is neither obvious nor is simply a matter of adding a handle. In response, the examiner is not

suggesting adding a handle to a spring loaded reel. Instead, the examiner is modifying the spring loaded reel by replacing it with one that is manually driven by a handle. Both a handle driven reel and a spring loaded reel are equivalent structures known in the art since they are both means for winding reels. Further, replacing the spring loaded reel with a handle driven reel would not alter the function of the measuring device in any way. The only difference would be that the user would be able to control the rate at which the reel is wound in or out. Thus since they are equivalent structures with similar functions, it would have been obvious to modify the measuring device of Mason with the handle driven reel as taught by King.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mason ('166) in view of King (USPN 3662969) as applied to claim 5 above and further in view of Koizumi et al. (USPN 5406715).

The appellant only further argues that Koizumi does not teach the deficiencies of Mason in claim 4. However, it is noted that the examiner does not use the Koizumi reference to meet the deficiencies of claim 4 but instead uses the references to meet the claim limitation in claim 6. Further the arguments with respect to claim 4 are addressed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Shay Karls

/Shay L Karls/

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TQAS TC 3600